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MICHAEL RODAK, J

APPENDIX

In the Supreme Court of the United States

OCTOBER TERM, 1974
No. 74-22

IVAN ALLEN COMPANY,
Petitioner,
vs.
UNITED STATES OF AMERICA,
Respondent.

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED JULY 26, 1974
CERTIORARI GRANTED DECEMBER 16, 1974

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DOCKET ENTRIES

May 14, 1971 Complaint with Exhibits A, B, C, & D, filed. Summons issued and delivered to U.S. Marshal.

May 17, 1971 Marshal's return on ser. executed 5-17-71 as to U.S. Atty. & executed 5-17-71 via Cert. mail as to Atty. Gen., filed.

July 15, 1971 ANSWER of def. with DEMAND for a jury trial, filed.

Aug. 26, 1971 Deft's interrogs. to pltf., filed.

Sep. 21, 1971 4 Month Notice sent to counsel.

Oct. 13, 1971 Def.'s Response to 4 month notice (letter), filed. TO RMS

Oct. 15, 1971 Pltf's. Response to 4 month notice (letter) with 2 attachment, filed. To RMS.

Nov. 12, 1971 Pltf's Answers to Defts. Interrogs., with attachments, filed.

Dec. 23, 1971 Notice to counsel requesting PT order by 1-31-72. (per CAM)

Feb. 3, 1972 Counsel advised PTO now due 3-1-72 (counsel advised ct. settlement possible).

Feb. 11, 1972 Set for jury trial on cal. commencing 3-13-72. Counsel advised.

Feb. 23, 1972 Ext. to 4-1-72 by CAM for submitting prop. PTO. Off cal. 3-13-72. Counsel advised.

Mar. 14, 1972 Request for production of documents under Rule 34, filed.

Mar. 28, 1972 Consent Order extending time thru 4-20-72 for a Consolidated Pre-Trial Order to be filed, filed. (Copy to counsel – 3/28/72)

Apr. 19, 1972 Deft's response to pltf's request for production of documents, filed.

Apr. 20, 1972 Proposed Consolidated Pre-Trial Order, Rec'd. TO RMS

Apr. 27, 1972 Deft's certificate as to production, with documents, attached, filed.

May 4, 1972 Pltf's motion for Order compelling discovery under Rule 37 with attachment, filed. To CAM.

Pltf's memo of points & Authorities in support of motion, filed. To CAM.

May 18, 1972 SUBMITTED ON PLTFS' MOTION FOR ORDER COMPELLING DISCOVERY UNDER RULE 37.

May 22, 1972 Defts. opposition to pltfs' motion for order compelling discovery under Rule 37 with memorandum of points & authorities & exhibits "A" thru "D", filed. To CAM.

May 24, 1972 Set for jury trial on cal. commencing 6-19-72 at 10 a.m. Notice to counsel.

June 8, 1972 ORDER on motion to compell discovery that Ct. having been informed the prtys. have entered into a stipulation . . . which may render moot plf.'s motion . . . ruling deferred pending action by the Ct. on said stipulation, filed. (c. counsel)

June 12, 1972 Stipulation with Exhibits A & B, filed.

SUBMITTED PURSUANT TO ORDER OF JUNE 8, 1972 and STIPULATION FILED THIS DAY.

June 14, 1972 Case removed from trial cal. for 6-19-72; Counsel to file briefs as follows: Pltf's. – due 7-12-72, Deft's. reply – due 8-1-72 and Pltf's rebuttal – due 8-11-72.

FILE RETURNED – RESUBMIT AFTER 8/11/72. (see note in file)

July 12, 1972 Brief on behalf of taxpayer, Ivan Allen Co., with Exh. A & B, filed.

July 31, 1972 Trial brief for the deft., filed.

Aug. 11, 1972 Reply brief on behalf of taxpayer Ivan Allen Company, filed.

Aug. 15, 1972 RESUBMITTED PURSUANT TO ENTRY OF JUNE 8, 1972 AND STIPULATION FILED 6/12/72.

Oct. 6, 1972 ORDER filed directing the Government to refund all accumulated earnings taxes, including interest thereon, collected for the taxpayer's fiscal years ending June 30, 1965 and June 30, 1966. Copy to counsel.

Oct. 18, 1972 Stipulation, filed. To CAM for approval.

Oct. 26, 1972 ORDER approving above stipulation & dismissing issue (Par. 1), deft. has refunded to pltf. the interest in question, filed. Copy to counsel.

Dec. 18, 1972 set for non-jury trial 1-8-73, counsel notified.

Feb. 9, 1973 set for non-jury trial 2-12-73, counsel notified.

May 3, 1973 Stipulation, with approval of Court that the "salary issues" involved be dismissed with prejudice, each party to bear its own costs with respect thereto, filed. Copies furnished.

JUDGMENT filed & entered that the pltf. recover from the deft. the sum of $150,515.85 in accumulated earnings tax paid to the deft. for the taxable years ended June 30, 1965, and June 30, 1966, plus int. thereon as provided by law & that the pltf. recover its taxable costs from the deft. to the extent such costs are attributable to the issue relating to the accumulated earnings tax involved. Copies furn.

June 28, 1973 Defendant's Notice of Appeal, filed. (c. counsel & USCA w.d.s.)

August 2, 1973 RECORD MAILED ON APPEAL TO USCA. (ACK 1of2)

May 29, 1974 Certified Copy of Judgment from USCA REVERSING AND REMANDING The judgment of the U. S. District Court for the additional factual determination of whether one purpose for the accumulation was to avoid income tax on behalf of shareholders in accordance with the opinion of USCA & directing that pltf-appellee pay to the deft-appellant the costs on appeal to be taxed by USCA, with copy of Bill of costs in the amount of $199.20, with opinion rec'd. (TO CAM) (w/file)

June 11, 1974 ORDER making mandate the judgment of the U.S. District Court, filed. Mandate, filed.

Bill of costs taxed in U.S.C.A. against pltf. in sum of 199.20, filed.

Notice to all counsel in compliance with Local Rule 141.4.

Oct. 8, 1974 Notice to counsel requesting consolidated proposed PTO by 11-1-74.

Oct. 15, 1974 Notice to counsel setting for non-jury trial 11-4-74.

Oct. 23, 1974 ORDER removing this action from 11/4/74, trial calendar and CONTINUING same pending the decision of the Supreme Court on pltf's petition for writ of certiorari; and counsel for pltf shall notify court upon receipt of notice of the Supreme Court's ruling, filed. (Copy counsel 10/25/74)

IN THE
UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CIVIL ACTION NO. 15130

IVAN ALLEN COMPANY,
Plaintiff,

vs.

UNITED STATES OF AMERICA,
Defendant.

COMPLAINT

(Filed May 11, 1971)

COMES NOW IVAN ALLEN COMPANY, plaintiff, and brings this action against the UNITED STATES OF AMERICA, defendant, and respectfully shows:

1.

Jurisdiction of this Honorable Court is invoked under 28 U.S.C. §1346(a)(1). This action is a civil action against the United States of America, for the recovery of internal revenue taxes erroneously and illegally assessed against and collected from the said Ivan Allen Company for its two taxable years beginning July 1, 1964 and ending June 30, 1965 and beginning July 1, 1965 and ending June 30, 1966.

2.

The plaintiff, Ivan Allen Company, (hereinafter referred to as "Taxpayer"), is a corporation organized and existing under the laws of the State of Georgia, with its principal office and place of business in Atlanta, Fulton County, Georgia, within the Atlanta Division of the Northern District of Georgia.